



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Leverett Saltonstall Building
100 Cambridge Street, Boston 02204

March 12, 1984

("Company") sells health care products to persons who are eligible for Medicare and Medicaid benefits. When such a person places an order for one of the Company's products, the Company sends an invoice to a Medicare or Medicaid insurance carrier, which pays the portion of the bill covered by Medicare or Medicaid, and is then reimbursed in federal or federal and state funds for that amount. The person placing the order or his private medical insurer pays the balance. You inquire whether such sales by the Company are exempt in whole or in part from the sales tax by virtue of Medicare or Medicaid coverage.

Sales to the United States, the Commonwealth of Massachusetts or any political subdivision thereof, or their respective agencies are exempt from the sales tax (G.L. c. 64H, § 6(d)). Also exempt are sales which the Commonwealth is prohibited from taxing under the Constitution or laws of the United States (G.L. c. 64H, § 6(a)). "Sale" generally means any transfer of title or possession of tangible personal property for a consideration (G.L. c. 64H, § 1(12)(a)).


Under the United States Constitution, immunity from state taxation is appropriate only when a levy falls on the United States itself, or on an agency or instrumentality so closely connected to the federal government that the two cannot realistically be viewed as separate entities, as far as the activity being taxed is concerned. United States v. New Mexico, 455 U.S. 720 (1982).

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The federal rules for administering the Medicare program contemplate the payment of state sales taxes on sales covered by the program (see Section 2122.2 of Part 1 of the Providers Reimbursement Manual, and Section 5213 of the Medicare Carriers Manual, both issued by the Medicare Bureau, Health Care Financing Administration).

Based on the foregoing, it is ruled that sales of health care products that are eligible for Medicare or Medicaid reimbursement are not sales to the United States, the Commonwealth, or an agency thereof, nor are they exempt under the Constitution or laws of the United States. Therefore, such sales are subject to the sales tax if not otherwise exempt; the tax is computed on the entire sales price, including the portion reimbursable under the Medicare or Medicaid program.

Very truly yours,

A handwritten signature in dark ink, appearing to read "H. O. Johnson", is written over the typed name of the Commissioner of Revenue.

Commissioner of Revenue

IAJ:JXD:mf

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